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Supreme Court of the United States

No. 75-1036

RUFUS BANKS, JR.,
Petitioner,

-vs-

STATE OF FLORIDA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA SECOND DISTRICT COURT OF APPEAL

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INDEX

	Page
Opinions Below	1
Jurisdiction	1
Question Presented	2
Authorities Involved	2
Statement	2
Reasons for Granting Writ	3
Conclusion	5
Certificate of Service	6

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TABLE OF AUTHORITIES

Cases:	Page
Ingram v. Florida, 264 So. 2d 109 (4 D.C.A. 1972	4, 5
Sibron v. New York, 392 U.S. 40, 73 (1968) (Harlan, J., concurring)	4
Terry v. Ohio, 392 U.S. 1 (1968)	3, 4, 5
United States Constitution:	
Fourth Amendment	2, 3, 5
Statutes:	
Florida Statute Section 790.01 (1) (4)	2
Florida Statute Section 790.05	2
Florida Statute Section 290.25 (3) (1) (m) (n)	2

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STATE OF FLORIDA,
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PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA SECOND DISTRICT COURT OF APPEAL

Opinions Below

The Florida Second District Court of Appeal filed its decision affirming Petitioner's conviction without opinion. Petition for Rehearing was filed and denied on April 26, 1975. A Petition for Writ of Certiorari was filed in the Florida Supreme Court and denied on September 24, 1975.

Jurisdiction

Petitioner was granted an Order Extending Time to File Petition for Writ of Certiorari to the United States Supreme Court extended to and including January 22, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(3).

BLEED THROUGH

Question Presented

Whether the State of Florida violated the rights of the Petitioner by conducting an unlawful search without probable cause contra to the Fourth Amendment guarantees?

Authorities Involved

United States Constitution, Fourth Amendment
Florida Statute Section 790.01 (1) (4)
Florida Statute Section 790.05
Florida Statute Section 790.25 (3) (1) (m) (n)

Statement

The Petitioner was charged with carrying a concealed firearm in violation of Florida Statute Section 790.01.

The trial court denied the Petitioner's Motion to Dismiss and the Petitioner's Motion to Suppress Evidence, after which the Petitioner entered a plea of nolo contendere reserving his right to appeal the trial court's ruling on the Motion. The court adjudicated the Petitioner to be guilty and sentenced him to a term of confinement in the Sarasota County Jail.

The circumstances which led to the Petitioner's arrest occurred on or about April 2, 1974. On the date of the arrest a police officer received information that the Petitioner would be dealing bolita on a designated street corner and that the Petitioner would be carrying a weapon. The testimony at the suppression hearing raised serious questions as to the reliability of the informant.

Although an *Aguilar-Spinelli-Harris* issue was argued concerning the informant, the crux of the previous appeals and that encompassed in this Petition revolves around the conduct of the arresting officer after he received this information.

The testimony of the officer revealed that he observed the Petitioner while on routine patrol. The Petitioner was standing on a corner in plain sight and was evidencing no suspicious conduct. The officer then initiated a confrontation with the Petitioner and subsequently found a concealed firearm after frisking him. There was no genuine dispute that absent the information given to the police officer earlier in the day, there existed no probable cause sufficient to justify the officer's conduct. The issue thus becomes whether a police officer who is observing an individual who is making no indication that he is committing a crime can nontheless initiate a confrontation with that individual when he has information that a crime might be committed.

Reasons for Granting Writ

The decision of the Florida Second District Court of Appeal affirmed an intrusion into the Fourth Amendment rights of the Petitioner. This Court is requested to review the factual and legal issues raised based upon the following grounds:

1. The trial court's ruling, which was affirmed by the District Court of Appeal, ignored proper application of the *Aguilar-Spinelli-Harris* test. There was little, if any, evidence to show that the informant had personal knowledge of the circumstances. Additionally, there was no independent police verification prior to the officer's confrontation with the Petitioner. (The testimony of the officer is included in the official record submitted to the Second District Court of Appeal, a copy of which is filed herewith.).

2. Contrary to *Terry v. Ohio*, 392 U.S. 1 (1968), the officer did not observe any conduct which led him to believe that a crime was or might be committed, prior to arrest.

3. The primary conduct which the officer was seeking to investigate as to the Petitioner was an alleged bolita operation.

BLEED THROUGH

The Petitioner prior to the confrontation was at all times within plain view of the officer and had he evidenced any suspicious conduct, then the officer would have had a founded suspicion of criminal wrongdoing. The nature of the suspected crime, i.e. bolita, and the location of the alleged crime, i.e. a street corner which could be observed, strongly suggests that the officer was not justified in initiating a confrontation absent an individual observation which would tend to support the information which he had previously received.

4. The holding in *Terry*, which was ignored by the trial court and the District Court of Appeal is clear. Before a court will condone a stop, it must have before it specific and articulable facts, not inarticulate hunches or an officer's inchoate and unparticularlized suspicion.

5. The conduct which the trial court and District Court of Appeal condoned is likewise in conflict with the established law in the State of Florida concerning search and seizure. *Ingram v. State*, 264 So. 2d 109 (4 D.C.A. 1972) suggests that when an officer seeks out an individual without probable cause for arrest and thereby voluntarily and intentionally initiates the encounter, any subsequent search and seizure would be deemed invalid.

6. Absent the facts which affirmatively suggest particular criminal activity, completed, current or intended, the officer was not justified in initiating the confrontation. *Sibron v. New York*, 392 U.S. 40, 73 (1968) (Harlan, J., concurring).

Conclusion

This Petition for Writ of Certiorari requests review of the conduct of a police officer immediately preceding a search and seizure circumstance. The Petitioner believes that the conduct of the officer which was affirmed by both the trial court and the District Court of Appeal is contrary to the mandates of the Fourth Amendment as defined primarily in *Terry v. Ohio* and the Florida decision of *Ingram v. Florida*.

Respectfully submitted,

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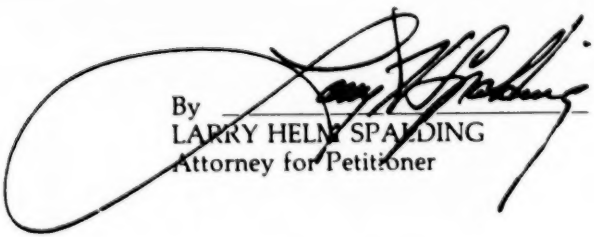

By _____
LARRY HELM SPALDING
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been mailed to MARY JO M. GALLAY, Assistant Attorney General, 419 Stovall's Professional Bldg., 305 North Morgan Street, Tampa, Florida 33602, on January 16, 1976.

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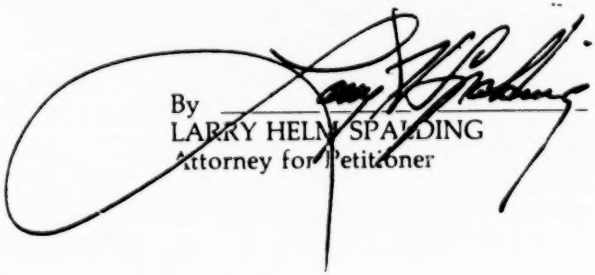

By _____
LARRY HELM SPALDING
Attorney for Petitioner

APPENDIX

IN THE

District Court of Appeal of Florida,

SECOND DISTRICT.

JANUARY, TERM, A.D., 1975

CASE NO. 74-751

RUFUS BANKS, JR.,
Appellant,

-vs-

STATE OF FLORIDA,
Appellee.

Opinion filed February 5, 1975.

Appeal from the Circuit Court for Sarasota County; Roy E. Dean, Judge

Tobey C. Hockett of Hockett Silver, Spalding & Lewis, Sarasota, For Appellant.

Robert L. Shevin, Attorney General, Tallahassee, and Mary Jo Gallay, Assistant Attorney General, Tampa, for Appellee.

PER CURIAM.

Affirmed.

Supreme Court of Florida

JULY TERM, A.D., 1975

WEDNESDAY, SEPTEMBER 24, 1975

CASE NO. 47,032

DISTRICT COURT OF APPEAL,
SECOND DISTRICT
74-751

RUFUS BANKS, JR.,
Petitioner,

-vs-

STATE OF FLORIDA,
Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

BOYD, OVERTON, ENGLAND AND SUNBERG, JJ., CONCUR

ADKINS, C. J., AND ROBERTS, J., DISSENT

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